

Remarks

In the Office action, all the pending claims 1, 4, 8, 9, 17-20 and 27-31 were rejected under 35 U.S.C. § 102(e) as anticipated by Kleineidam 7,150,585 (the '585 patent).

It is respectfully submitted for reconsideration that the '585 patent is not prior art to the pending application. The '585 patent was a US national stage application from parent PCT/EP03/10857. That parent PCT application, however, was published in German, not English. Accordingly, under 102(e) neither the PCT publication nor the US national application that derives from that application is available as prior art under 102(e). Please see MPEP § 706.02(f)(1), pages 700-29 through 700-30. Also, it is believed that Example 5 at page 700-34 of the MPEP is directly on point, as well as the flowchart on page 700-41.

Although it is believed that the '585 patent has no 102(e) date, the earliest possible date would be October 20, 2004 when the 371(c) requirements were completed. The present application was filed on September 17, 2004, and therefore pre-dates the US national stage filing date of the '585 patent. Note that the parent PCT publication date (October 14, 2004) for the '585 patent also is after the September 17, 2004 filing date of the present application.

The '585 patent also claims priority to two German national applications filed in October and December, 2002. The earlier German application should have published no earlier than March 2004. The present application claims priority to a provisional application that was filed November 24, 2003. Therefore, it would not appear that the German priority documents to the '585 application could be prior art unless they did not publish at the expected 18 month period from their filing.

Accordingly, reconsideration is respectfully requested to withdraw the rejections based on the '585 patent.

Respectfully submitted,

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